

BEFORE THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Pat YANANTON)	Date: March 18, 2009
)	
Serial No.: 10/033,862)	Group Art Unit: 3644
)	
Filed: 12/20/2001)	Examiner: R. Thomas PRICE
)	
Title: Absorbent Pad for Entrapping Fine)	Docket: YA-1718
and Coarse Particles, Retaining)	
Liquids, and Eliminating Odors)	
)	

CERTIFICATE OF SERVICE

I hereby certify that this correspondence is being deposited (in triplicate) with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to: Commissioner of Patents and Trademarks, P.O. Box 1450 Alexandria, VA 22313-1450 on _____ (Date)

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RENEWED BRIEF ON APPEAL UNDER 37 C.F.R. 41.37

Hon. Commissioner of Patents and Trademarks
Alexandria, VA 22313

Dear Board:

This Appeal is based on a non-final rejection of 12/24/2008 based on new grounds that arose as the result of an appeal conference in the appeal from the non-final rejection of Jul. 10, 2008. Appellant initiates this appeal under 37 C.F.R. § 41.37.

REAL PARTY IN INTEREST

The named Appellant and inventor, Pat Yananton, is the real party of interest in this Appeal. The Clorox Company of Oakland, CA is a party with potential contingent interests, who is named for purposes of identifying potential conflicts.

RELATED APPEALS AND INTERFERENCES

There are no other appeals or interferences known to Appellant or Appellant's legal representative which directly affect, will directly affect, be directly affected by or have a bearing on the Board's decision in this pending appeal. However, the following Serial Numbers identify applications having matters associated with the present invention that are also currently under appeal: U.S. Serial No. 11/169,738; and, U.S. Serial No. 10/269,713.

STATUS OF CLAIMS

Claims 1-4, 20, 33, 70 and 92-94 are the claims rejected for purposes of this Appeal. Claims 71, 72, 75, 77, 78, 82-85, 91 and 95 were withdrawn in the office action of July 10, 2008. Claims 7-19, 21-28, 32-35, 37-40, 43-44, 46 and 48-69 were withdrawn previously during prosecution. Claims 5-6, 29-31, 36, 41-42, 45, 47, 73-74, 76, 79-81 and 86-90 were cancelled during prosecution.

STATEMENT OF AMENDMENTS

Appellant filed amendments to claims 1, 2 and 4 after the Jul. 10, 2008 Office Action; however this amendment was not entered by the Office. Therefore, applicant understands the

current appeal is based upon the claims, as last amended on 03/31/2008.

SUMMARY OF CLAIMED SUBJECT MATTER

Briefly described, the present invention is an open porous, high loft structure that is used to mechanically capture particulates. It is formed of a preferably thin plastic impermeable bottom layer, and a top layer made of a premanufactured, bonded at the interstices, semi-rigid, high loft, open porous, inert filamentous non-woven class of material. The top layer can also be treated with a sticky cling enhancing substance such as tackifier that coats the fibers and interstices of the high-loft structure to enable capture of particulates and also to which a variety of dry, particulate, active ingredient can be applied. The dry particulate active ingredient can be super-absorbent polymers, baking soda, anti-microbial fragrances or odor-counteractive agents. Cling enhancing substances such as sticky, tackified adhesives can be treated to the high-loft, nonwoven top layer so as to enhance particle entrapment by enhancing the cling of the high loft, nonwoven fibers to increase the ability to capture particles to the top bonded high loft non-woven. After treatment with the sticky cling-enhancing substance, the top ,open, bonded, inert fiber, highloft layer can also be treated with the above dry particulate, such as super absorbent polymers, baking soda, antimicrobials, fragrances and odor-counteractive agents to eliminate odors.

The appellant's two layered pad includes at least a top, made of a premanufactured, bonded at the interstices, high loft, open porous, inert filamentous non-woven class of material layer and a bottom impervious layer. Figure 1A shows one embodiment of a two layer particle-entrapping pad 10 for fine particles. A bonded high loft non-woven top layer 11 is secured to a plastic liquid impervious bottom layer 13. Top, more dense bonded, open filamentous layer 11

traps fine particles 12. Once the particles 12 are trapped within the non-woven, they mostly either fall to the bottom of the pad 10 or many remain suspended within the matrix of bonded interstices, open porous, filamentous, top layer 11. Figure 1B shows a two layer particle-entrapping pad for coarse particles. A less dense, more open, bonded, high loft non-woven top layer 11 is secured to a plastic liquid impervious bottom layer 13. Coarse particles 14 are trapped in the more open non-woven layer 11. In the embodiments of either figures 1A or 1B, cling enhancing additives such as tackified adhesives, can increase the holding capacity of the porous, bonded, inert fiber highloft top layer 11. Additionally, deodorants such as dry particulate baking soda can be added or pre-loaded to the, sticky, cling treated top layer 11 or between layers 11 and 13.

For entrapping coarse and fine particles, a variety of inert, bonded, non-absorbing high-loft non-wovens exist which can be used to retain the dry particulate material when the inert, nonabsorbent, fibers of the highloft are previously treated with cling agents such as tackified adhesives. Examples of this bonded, high-loft non-woven materials made of a premanufactured, bonded at the interstices, high loft, open porous, inert filamentous non-woven class of material include polyester, nylon, polypropylene and the like and these can be manufactured in a variety of thicknesses and densities as may be desired by both user or needed for the use. The denier for these materials can range from thick with relatively sparse thread count to thin with very high thread count. During the manufacturing process the fibers are sprayed with a binding agent so as to join the fibers at the points of junction. Union Wadding Inc. in Pawtucket, Rhode Island and Hollinee Filtration (now Ahlstrom Inc.) in Texas, as well as many other non-woven suppliers supply the class of bonded,, open porous highloft non-wovens in all types of lengths, densities, widths etc. with binding agents or tacky materials applied upon request.

For further clarification, the present invention claims the use of a particle entrapment pad comprising *preformed, bonded, high loft non-absorbent nonwoven* top layer. A nonwoven is cited at <http://www.inda.org/about/directoryquest.pdf>. Per INDA Supplier and Manufacturer List, (See Sec. 2.4 Suppliers by types of structures (highlofts)) wherein web forming structures is a separate category and highlofts is a separate type of finished, nowoven type of rolled good, in that category as compared to other types of nonwovens. (Reference pat's new evidence.

Nowovens have technical definitions by various organizations. ASTM defines a nonwoven as a "a textile structure produced by bonding or interlocking of fibers, or both, accomplished by mechanical, chemical or solvent means and combinations thereof..." Note that the term does **not** include paper, or fabrics which are woven, knitted, tufted, or those made by wool or other felting processes. ASTM D123, D-13 (1970). Further, INDA offers a more current, revised definition: "Nonwoven fabrics are generally defined as sheet or web structures made by bonding and or interlocking fibers, yarns or filaments by mechanical, thermal, chemical or solvent means." The European trade association EDANA has a concurrent definition which includes additional limitations, namely,

"Nonwovens are distinguished from paper, notably by the bulk and rupture energy criteria as outlined as follows (in order of ease of control). A. if it is made of 100% manmade fibers, or then b. if its bulk index is above 7 or if its total rupture energy index is higher than 7 joules or then c. if together its total rupture index is between 7 and 1.2 joules AND its bulk index between 7 and 2."

See also INDA trade association, the trade association of the nonwoven fabrics industry, at www.inda.org, and specifically, http://www.inda.org/category/nwn_index.html.

In the trade, 'nonwovens' have a particular technical meaning that excludes carpet or anything that requires the converting of fibers to yarn, etc.

For example, Ahlstrom Air Media is a current supplier and manufacturer of bonded 'hi-loft nonwovens and needlepunch medias for a variety of applications', by their own description. Ahlstrom Air Media is the current successor in interest to the company formerly known as HOLINEE as referenced in the original application at page 10, lines 18-19.

Mapping of Independent Claims:

1. A nonabsorbent particle entrapment pad comprising:

<p>a bonded high loft, non-absorbent nonwoven top layer, said high loft nonwoven being defined as an open pore matrix or web of fibers attached to a barrier bottom layer;</p>	<p>A high loft non-woven top layer 11 is secured to a plastic liquid impervious bottom layer 13 (Pg. 7, ll. 3-4):</p> <p>The structure preferably includes a plastic impermeable bottom layer and a top layer made of a premanufactured, bonded at the interstices, semi-rigid, high loft, open porous, inert filamentous non-woven class of material (Pg. 5, paragraph 3, Specification Amendment 10/29/2007).</p>
<p>wherein said bonded high loft nonwoven top layer is adapted such that the internal pores, and interstices, when receives collected externally applied fine to coarse solid particles the web of fibers thereby entraps, and retains collected particles, said base barrier bottom layer maintains said collected particles with said entrapment pad.</p>	<p>Top layer 11 traps fine particles 12. Once the particles 12 are trapped within the non-woven, they either fall to the bottom of the pad 10 or remain suspended within top layer 11 (Pg. 7, ll. 4-6):</p> <p>Coarse particles 14 are trapped in the non-woven layer 11 (Pg. 7, ll. 8-9);</p> <p>Top, more dense bonded, open filamentous layer 11 traps fine particles 12. Once the particles 12 are trapped within the non-woven, they mostly either fall to the bottom of the pad 10 or remain suspended within the matrix of bonded interstices, open porous, filamentous, top layer 1 (Pg. 7, paragraph 1, 10/19/2007 Specification Amendment).</p>

71. A particle entrapment pad comprising:

<p>a high loft, non absorbent nonwoven top layer treated with a cling enhancing substance to receive and trap particles.</p>	<p>Cling enhancing substances such as sticky, tackified adhesives, or static substances can be added to the top layer so as to enhance particle entrapment by enhancing the cling of the captured particle to the top non-woven (Pg. 5, paragraph 3, 10/29/2007 Specification Amendment);</p>
<p>said high loft nonwoven being defined as a matrix formed of fibers or filaments randomly oriented and fused at intersecting points of said fibers or filaments and secured to an impervious bottom layer to maintain said particles within said entrapment pad,</p>	<p>The structure preferably includes a plastic impermeable bottom layer and a top layer made of a premanufactured, bonded at the interstices, semi-rigid, high loft, open porous, inert filamentous non-woven class of material (Pg. 5, paragraph 3, Specification Amendment 10/29/2007);</p> <p>Top layer 11 traps fine particles 12. Once the particles 12 are trapped within the non-woven, they either fall to the bottom of the pad 10 or remain suspended within top layer 11 (Pg. 7, ll. 4-6);</p> <p>Coarse particles 14 are trapped in the non-woven layer 11 (Pg. 7, ll. 8-9);</p>
<p>wherein said high loft non-woven top layer receives and entraps particles and said bottom layer is impervious to said particles.</p>	<p>Top layer 11 traps fine particles 12. Once the particles 12 are trapped within the non-woven, they either fall to the bottom of the pad 10 or remain suspended within top layer 11 (Pg. 7, ll. 4-6);</p>

75. A particle entrapment pad comprising:

<p>a high loft, non-woven top layer, said high loft non-woven being defined as a matrix formed of synthetic fibers or filaments randomly oriented and fused at intersecting points of said fibers or filaments, forming an open porous structural web or matrix, capable to receive and trap particles and secured to a bottom layer to maintain said particles within said entrapment pad;</p>	<p>A high loft non-woven top layer 11 is secured to a plastic liquid impervious bottom layer 13. Top layer 11 traps fine particles 12. Once the particles 12 are trapped within the non-woven, they either fall to the bottom of the pad 10 or remain suspended within top layer 11 (Pg. 7, ll. 3-6);</p> <p>The structure preferably includes a plastic impermeable bottom layer and a top layer made of a premanufactured, bonded at the interstices, semi-rigid, high loft, open porous, inert filamentous non-woven class of material (Pg. 5, paragraph 3, Specification Amendment 10/29/2007).</p>
<p>said top layer being treated with a cling enhancing substance applied or placed within the web; and,</p>	<p>Cling enhancing substances such as sticky, tackified adhesives, or static substances can be added to the top layer so as to enhance particle entrapment by enhancing the cling of the captured particle to the top non-woven (Pg. 5, paragraph 3, 10/29/2007 Specification Amendment);</p> <p>cling enhancing additives such as tackified adhesives, can increase the holding capacity of the porous, bonded, inert fiber highloft top layer 11 (Pg. 7, Paragraph 1, 10/29/2007 Specification Amendment).</p>
<p>said high loft nonwoven top layer is treated with at least one additional dry, solid particulate agent.</p>	<p>either layer or the interface, also can be treated with the above dry particulate Super absorbent polymers, baking soda, antimicrobials, and odor-counteractive agents as used in the middle layer (Pg. 5, paragraph 3, 10/29/2007 Specification Amendment).</p>

82. A particle entrapment pad comprising

<p>an impervious bottom layer and a high loft non-woven top layer, wherein said high loft non-woven top layer includes a cling enhancing substance within a matrix of said non-woven that is sticky and can cling to dry particulates without entering into chemical reaction with those particulates and is chemically inert while clinging to the particulates.</p>	<p>A high loft non-woven top layer 11 is secured to a plastic liquid impervious bottom layer 13 (Pg. 7, ll. 3-4);</p> <p>Cling enhancing substances such as sticky, tackified adhesives, or static substances can be added to the top layer so as to enhance particle entrapment by enhancing the cling of the captured particle to the top non-woven (Pg. 5, paragraph 3, 10/29/2007 Specification Amendment);</p> <p>cling enhancing additives such as tackified adhesives, can increase the holding capacity of the porous, bonded, inert fiber highloft top layer 11 (Pg. 7, Paragraph 1, 10/29/2007 Specification Amendment).</p>
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91. An absorbent particle entrapment pad comprising:

<p>a high loft, non-absorbent nonwoven top layer, said high loft nonwoven being defined as an open pore matrix or web of fibers attached to an impervious bottom layer; and</p>	<p>A high loft non-woven top layer 11 is secured to a plastic liquid impervious bottom layer 13 (Pg. 7, ll. 3-4);</p> <p>The structure preferably includes a plastic impermeable bottom layer and a top layer made of a premanufactured, bonded at the interstices, semi-rigid, high loft, open porous, inert filamentous non-woven class of material (Pg. 5, paragraph 3, Specification Amendment 10/29/2007).</p>
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a cling enhancing substance applied to a portion of said fibers; and	Cling enhancing substances such as sticky, tackified adhesives, or static substances can be added to the top layer so as to enhance particle entrapment by enhancing the cling of the captured particle to the top non-woven (Pg. 5, paragraph 3, 10/29/2007 Specification Amendment); cling enhancing additives such as tackified adhesives, can increase the holding capacity of the porous, bonded, inert fiber highloft top layer 11 (Pg. 7, Paragraph 1, 10/29/2007 Specification Amendment).
superabsorbent polymer affixed to said cling enhancing substance; wherein said superabsorbent polymer clinging to said fibers allow said non-absorbent nonwoven top layer to emulate absorbency when wetted.	For entrapping coarse and fine particles, a variety of inert, bonded, non-absorbing high-loft non-wovens exists which can be used to retain the dry particulate, super absorbing polymer water absorbing material when the inert, nonabsorbent, fibers of the highloft are previously treated with cling agents such as tackified adhesives (Pg. 10, paragraph 2, 10/29/2007 Specification Amendment).

GROUND OF REJECTION TO BE REVIEWED ON APPEAL

In the new grounds for rejection dated 12/24/2008, the art Examiner relies upon the following reference for a basis of 35 U.S.C. § 102(b) rejections:

U.S. Pat. No. 5,956,376 to Datta *et al.* titled "Thermoformable Barrier Nonwoven Laminate" discloses, describes, and claims a heat fusible laminate for the purpose to form a flexible, soft, resilient plastic base layer to conform a sanitary napkin, diaper or the like to the wearer and supports an absorbent member above it, and all wrapped in a soft, thin coversheet nonwoven. In the new grounds for rejection dated 12/24/2008, the art Examiner relies upon the following reference for a basis of 35 U.S.C. § 103(a) rejections:

U.S. Pat. No. 5,956,376 to Datta *et al.* as described above; and

U.S. Patent No. 4,484,250 to Rzepecki *et al* titled "Static Dissipative Mat" discloses, describes, and claims a floor mat to enable personnel-accumulated static electricity to safely discharge from a person standing on the mat. It is repeatedly washable, and has a *solid*, sticky or tacky upper surface. The top layer is a solid, non-porous, vinyl layer that has a stickiness imparted through plasticizers being maintained in solution within the material during manufacture, causing the solid vinyl layer to remain tacky.

In the December 24, 2008 Non-Final Office, Examiner rejected:

Claims 20 and 33 under 35 U.S.C. § 112, second paragraph;

Claims 1-4, 20, and 33 under 35 U.S.C. § 102(b) as being anticipated by Datta *et al*; and

Claims 70 and 92-94 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Datta *et al* in view of Rzepecki *et al*.

ARGUMENT

1. *Claim Rejections - 35 USC § 112*

Claims 20 and 33 under 35 U.S.C. § 112, second paragraph.

Claim 20 is dependent on claim 1, and included the added limitations "wherein said collected particles are selected from the group comprising: cat litter; workshop debris, dust; and pet food".

Claim 33 is dependent on Claim 4, and includes the added limitations "wherein said baking soda absorbs odor in a refrigerator".

In rejecting a claim under the second paragraph of 35 USC 112, it is incumbent on the

examiner to establish that one of ordinary skill in the pertinent art, when reading the claims in light of the supporting specification, would not have been able to ascertain with a reasonable degree of precision and particularity the particular area set out and circumscribed by the claims. *Ex parte Wu*, 10 USPQ 2d 2031, 2033 (B.P.A.I. 1989). 35 USC § 112 requires as a minimum, that the inventor "indicate" a use for a new composition . . . [T]he test is what the application as a whole communicates to one skilled in the art. In some cases an applicant may, merely by naming his new instrument or material, have indicated what its use is, as, for example, by saying he has invented a "match," "hammer," "paint," "adhesive," or "detergent." *In re Nelson*, 126 USPQ 242, 253 (C.C.P.A. 1960), *overruled in part on other grounds by In re Kirk*, 153 USPQ 48 (C.C.P.A. 1967)

It has long been held that the claim definiteness requirement of the second paragraph of section 112, to present "subcombination" claims, drawn to only one aspect or combination of elements of an invention that has separate utility and apart from other aspects of the invention.. "[I]t is not necessary that a claim recite each and every element needed for the practical utilization of the claimed subject matter". *Stiftung v. Renishaw plc*, 20 USPQ 2d 1094, 1101 (Fed. Cir. 1991).

In the instant matter, applicant feels that a cat litter collection pad, a workshop debris collection pad, a dust collection pad, a pet food collection pad, and/or a baking soda charged refrigerator odor absorbing pad all impart sufficient additional limitation, in light of the knowledge of one skilled in the art, over the independent claims upon which they rely.

Appellant respectfully requests that the Board reverse this rejection.

2. **Claim Rejections - 35 USC § 102**

Claims 1-4, 20 and 33 stand rejected under 35 USC § 102(b) as being anticipated by U.S.

Pat. No. 5,959,376 to Datta et al. (hereinafter "Datta")

For ease of review, this rejection is listed in its entirety:

"Datta et al teaches a bonded high loft, non-absorbent nonwoven top layer 26 having an open matrix which will inherently collect particles. A base bottom barrier layer 22 maintains said collected particles within said entrapment pad. The absorbent and nonabsorbent layers include cling enhancing substances. See columns 3, second paragraph and column 12, first paragraph and related discussions. Regarding claim 4, baking soda is widely regarded odor absorbing particles."

Applicant's reading of the Datta reference identifies "a liquid-permeable liner 26" (column 2, lines 66-67), not a bonded high loft, non-absorbent nonwoven top layer. It is actually a laminated bottom layer that has "uniformly distributed interfiber bonds [containing] a structural fiber component and a heat-activable component" (Col. 4, lines 64-66), for heat fusing to another layer.

Applicant's further reading of Datta describes a custom designed base sheet laminate that consisting of 2 distinct layers, a plastic sheet and a lofty nonwoven web that are heat fused and heat glued together (hot melt at 350 deg) to form a single laminate layer, the purpose of which is it to form a flexible soft, resilient plastic base layer to conform to the wearer and supports the absorbent members above it (3rd nonwoven), preventing liquid from escaping the diaper, sanitary napkin, etc. Above this layer is an absorbent layer protected by a wrap of soft nonwoven. This resulting base layer is a laminate that contains the web is very dense and thin, and not capable of holding large or fine particulate matter.

As would be understood by a person having ordinary skill in the relevant art, a 'laminate' is layered material containing two or more sheets bonded together with an adhesive, foam or thermoplastic resin. A 'laminate nonwoven' is a laminate of two or more layers of material in which the essential component is a nonwoven material.

It is also designed to be heat sealable (needs to melt) and as such the web is of limited type. It has to melt, and when one adds heat to activate adhesive into the web (as dry powdered or liquid) and then the whole sticky web is put together with 350 deg and pressure to form a new entity as a laminate. A laminate is 2 or more layers bonded together, and not a bonded, highloft nonwoven. The Datta device absorbs liquid, gives resiliency to conform to body, and is designed to be strong, resilient, solid, absorbent and soft.

There is no mention of capturing particles. The examiner indicates that it will *inherently collect particles*. This appears to be an improper attempt to take Official Notice of matter that is not "capable of instant and unquestionable demonstration", as expressly required by section 2144.03(A) of the MPEP. Additionally, the Datta reference fails to contain an enabling disclosure in reference to a bonded, high loft nonwoven partical entrapment pad. Moreover, courts have long rejected the notion that official notice can be taken on the state of the art. (See Memorandum to Patent Examining Corps from the Deputy Commissioner for Patent Examining Policy regarding Procedures for Relying on Facts Which are Not of Record as Common Sense or for Taking Official Notice, n.6, citing *In re Eynde*, 480 F.2d 1364, 1370, 178 USPQ 470, 474 (CCPA 1973)). Thus, the Office's attempt to officially notice the level of ordinary skill in the art is improper as a matter of law.

In sum, the Office's attempts at Official Notice are improper and traversed. The base

laminate of Datta is not CAPABLE of functioning as a particle entrapment pad due to its high density of the heat sealable web component and the filling with hot melt adhesives even before compressing and heating. After heating, the fibers fuse and removes any interim pores that may have existed. There is no way to collect particles; additionally, there are no pores open to the air any more PLUS there is a second absorbent layer over the laminate and a third layer thin nonwoven layer for contact with skin.

The Datta reference teaches away from the present device, which is a very open, rigid two layer pad, open facing bonded highloft, open porous nonwoven, for large coarse particles (see drawings) with an impermeable layer that is thin and designed to prevent particles from penetrating. Current claims at issue do not include absorbent layer.

Further still, the present invention describes a tacky material that is sprayed on to the open high loft to aid in capturing solid particulates or preloading dry active ingredients. Superabsorbent polymer is identified as a dry particle in which the current web can be a carrier for SAP and still allow the pad to be open to the environment. The dry SAP particulate clings to the inert, tacky fibers within the highloft.

The current innovation uses a ½ inch high, rectangular bonded highloft nonwoven is inflexible, flat, coarse, and holds this shape. It could not be worn against skin comfortably. Any tack that is applied stays sticky, and the inner and outer web never cures to nonsticky state, as would a heat fusible hot melt

Applicant claims a bonded *high-loft* nonwoven (Claim 1) as a top layer whose outer and inner filaments are coated with a cling enhancing substance (Claim 2) preloaded (Claim 3) with dry reactive particles (Claim 4) that coat each fiber applied to its web matrix. The cling

enhancement substance is a sticky (Claim 70, 92-94) residue that mechanically entraps (Claims 92-94) foreign particles or dry powdered active ingredients within the non-woven's web.

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly described or inherently described, in Datta. *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). The following examples are a list of limitations which distinguish the present invention over Datta:

- Applicant claims a distinctly separate bonded highloft nonwoven top layer, while Datta teaches a web and plastic sheet laminate treated with a hot melt, heat fusable, liquid absorbing laminated structure;
- Appellant claims a sticky cling enhancement substance added to the outside of each filament, while Datta rather teaches a mixture of crimped fibers and heat fusable, hot melt adhesive that is cured;
- Appellant claims its cling enhancement substance applied to the matrix web of its high-loft nonwoven filaments while Datta rather claims its hot melt adhesive cured under heat and pressure;
- Appellant claims foreign particles entrapped by means of mechanical entrapment by means of the entrapment in a disposable, high loft nonwoeven, while Datta claims a liquid absorbing sanitary napkin;
- Appellant claims its top layer being the high-loft open-pore web while Datta claims its top layer being an absorbent material supported by a conformable laminate structure;
- Appellant claims a cling enhancement substance that coats each fiber of the

open porous high-loft web, which can then be pre-loaded with dry solid particulates of a water-soluble particle, such as, for example, baking soda, while Datta fails to disclose any external particles coating to its structure; and,

- Similarly, because Datta fails to disclose a sticky cling enhancement substance, it cannot and does not teach the Appellant's invention of a web having its fibers preloaded with dry, active particulates (that can further dissolve in water, for example).

For the distinctions articulated in the foregoing, Appellant submits that Datta be removed as an anticipatory reference. The Datta reference teaches a different structure, a different method of use and field of use, and lacks any coating of activated particulates whatsoever.

3. *Claim Rejections - 35 USC § 103*

Claims 70 and 92-94 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Datta et al in view of Rzepecki et al.

For the reasons stated upon, it is felt that Datta references nonanalogous.

Similarly, U.S. Patent No. 4,484,250 to Rzepecki et al (hereinafter "Rzepecki") discloses, describes, and claims a static dissipative floor mat to enable personnel-accumulated static electricity to safely discharge from a person standing on the mat. It is repeatedly washable (col. 1, line 47), and has a *solid* upper surface (Col. 3, lines 32-33) that has a sticky or tacky upper surface. (Col. 2, ln 66 through Col. 3, lines 5) The top layer is a solid, non-porous, vinyl layer that has a stickiness imparted through plasticizers being maintained in solution within the material. (Col. 3, lines 10-20).

Applicant fails to see where anyone of reasonable skill in the related art would take a conformable, molded, absorbent sanitary napkin of Datta, modify it with a solid, non-porous, sticky vinyl upper surface, and somehow obtain a bonded, high loft, nonwoven, open pore particle collection pad having a tackified adhesive sprayed into and coating the inner pore fibers, then preloaded with dry active ingredients. Based upon the above arguments, it is felt that the differences between the present invention and all of these references are such that rejection based upon 35 U.S.C. 103, in addition to any other art, relevant or not, is also inappropriate. However, by way of additional argument, the Applicant wishes to point out that it is well established at law that for a proper *prima facie* rejection of a claimed invention based upon obviousness under 35 U.S.C. 103, the cited references must teach every element of the claimed invention. Further, if a combination is cited in support of a rejection, there must be some affirmative teaching in the prior art to make the proposed combination. See Orthopedic Equipment Company, Inc. et al. v. United States, 217 USPQ 193, 199 (Fed. Cir. 1983), wherein the Federal Circuit decreed, "Monday Morning Quarter Backing is quite improper when resolving the question of obviousness." Also, when determining the scope of teaching of a prior art reference, the Federal Circuit has declared:

"[t]he mere fact that the prior art could be so modified should not have made the modification obvious unless the prior art suggested the desirability of the modification." (Emphasis added). In re Gordon, 221 USPQ 1125, 1127 (Fed. Cir. 1984).

There is no suggestion as to the desirability of any modification of the references to describe the present invention. An analysis of the disclosures within the cited references fails to cite every element of the claimed invention. When the prior art references require a selective combination to render obvious a subsequent claimed invention, there must be some reason for the

selected combination other than the hindsight obtained from the claimed invention itself. Interconnect Planning Corp v. Feil, 774 F.2d 1132, 227 USPQ 543 (CAFC 1985). There is nothing in the prior art or the examiners arguments that would suggest the desirability or obviousness of making a bondend, high loft nonwoven particle entrapment pad of the present invention. Uniroyal, Inc. v. Rudkki-Wiley Corp., 837 F.2d 1044, 5 USPQ 2d 1432 (CAFC 1988). The examiner seems to suggest that it would be obvious for one of ordinary skill to attempt to produce the currently disclosed invention. However, there must be a reason or suggestion in the art for selecting the design, other than the knowledge learned from the present disclosure. In re Dow Chemical Co., 837 F.2d 469, 5 USPQ.2d 1529 (CAFC 1988); see also In re O'Farrell, 853 F.2d 894, 7 USPQ 2d 1673 (CAFC 1988).

The Court of Appeals for the Federal Circuit (CAFC) in its opinion in In re Fine, 837 F.2d. 1071,1075, 5 USPQ 2d 1596, 1600 (Fed. Cir. 1988), (later upheld in In re Dance, 160 F.3d. 1339, 48 USPQ 2d. 1635 (Fed. Cir. 1998), sets forth the test of how the disclosure or teaching of references should be applied under 35 USC §103:

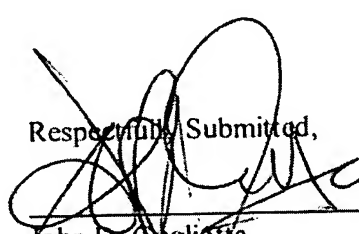
“Obviousness is tested by “what the combined teachings of the references would have suggested to those of ordinary skill in the art.” In re Keller, 642 F.2d. 413, 425, 208 USPQ 871, 881 (CCPA 1981). But it “cannot be established by combining the teachings of the prior art to produce the claimed invention, absent some teaching or suggestion supporting the combination.” ACS Hosp. Sys., 732 F.2d at 1577, 221 USPQ at 933. And “teachings of references can be combined only if there is some suggestion or incentive to do so”. Id., Here, the prior art contains none. . . . One cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention.”

To summarize, it appears that only in hindsight does it appear obvious to one of ordinary skill in the pertinent art to combine the present claimed and disclosed combination of elements. To reject the present application as a combination of old elements leads to an improper analysis of

the claimed invention by its parts, and instead of by its whole as required by statute. Custom Accessories Inc. v. Jeffery-Allan Industries, Inc., 807 F.2d 955, 1 USPQ 2d 1197 (CAFC 1986); In re Wright, 848 F.2d 1216, 6 USPQ 2d 1959 (CAFC 1988).

Appellant respectfully requests that the Board reverse this rejection and remove Datta as an anticipatory reference.

Respectfully Submitted,



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CLAIMS APPENDIX

The claims on appeal are as follows:

1. A nonabsorbent particle entrapment pad comprising:
a bonded high loft, non-absorbent nonwoven top layer, said high loft nonwoven being defined as an open pore matrix or web of fibers attached to a barrier bottom layer;
wherein said bonded high loft nonwoven top layer is adapted such that the internal pores, and interstices, when receives collected externally applied fine to coarse solid particles the web of fibers thereby entraps, and retains collected particles, said base barrier bottom layer maintains said collected particles within said entrapment pad.
2. The pad of claim 1, further comprising an externally applied, cling enhancing substance placed or applied within at least a portion of said fibers within said matrix or web, wherein cling enhancing substance enhances the ability of the matrix fibers to mechanically cling on to the solid particulates.
3. The pad of claim 2 wherein said cling enhancing substance places or applied on the fibers is purposely preloaded with dry solid particles that are soluble in water, or react with water when wetted.
4. The pad of claim 3, wherein said dry reactive particles are selected from the group

comprising: baking soda; dry or powdered particulates; anti-microbial agent; superabsorbent polymer; disinfectant; silica gel; antifungal; fragrance; and odor-counteractive agent.

7. (Withdrawn) The pad of claim 1, further comprising a liquid-absorbing middle layer.
8. (Withdrawn) The pad of claim 7, wherein said middle layer is wood pulp.
9. (Withdrawn) The pad of claim 7, wherein said middle layer is a super absorbent polymer.
10. (Withdrawn) The pad of claim 7, wherein said middle layer is treated with baking soda.
11. (Withdrawn) The pad of claim 10, further comprising a super absorbent polymer.
12. (Withdrawn) The pad of claim 7, wherein said middle layer is treated with an anti-microbial agent.
13. (Withdrawn) The pad of claim 7, wherein said middle layer is treated with an odor-counteractive agent.
14. (Withdrawn) The pad of claim 8, wherein said wood pulp is treated with a super absorbent polymer.
15. (Withdrawn) The pad of claim 7, wherein said top layer is treated with a cling

enhancing substance.

16. (Withdrawn) The pad of claim 7, wherein said top layer is treated with baking soda.

17. (Withdrawn) The pad of claim 7, wherein said top layer is treated with an anti-microbial agent.

18. (Withdrawn) The pad of claim 7, wherein said top layer is treated with an odor-counteractive agent.

19. (Withdrawn) The pad of claim 7, wherein said pad includes a decorative design.

20. The pad of claim 1, wherein said collected particles are selected from the group comprising: cat litter; workshop debris, dust; and pet food.

21. (Withdrawn) The pad of claim 7, wherein said pad is used as a dish-draining mat.

22. (Withdrawn) The pad of claim 7, wherein said pad is used as a doormat.

23. (Withdrawn) The pad of claim 25, wherein said doormat is a runner.

24. (Withdrawn) The pad of claim 7, wherein said pad is used as a car floor mat.

25. (Withdrawn) The pad of claim 7, wherein said pad is used as a bathroom mat.
26. (Withdrawn) The pad of claim 7, wherein said pad is used under countertop soap dishes and dispensers.
27. (Withdrawn) The pad of claim 7, wherein said pad is used to line garbage receptacles.
28. (Withdrawn) The pad of claim 7, wherein said pad is used to catch excess water and soil under potted plants.
32. (Withdrawn) The pad of claim 7, wherein said pad is used in the vicinity of a pet food or pet water dish.
33. (Withdrawn) The pad of claim 4, wherein said baking soda absorbs odors in a refrigerator.
34. (Withdrawn) The pad of claim 9, further comprising baking soda, wherein said pad is used to absorb odors and excess moisture.
35. (Withdrawn) The pad of claim 7 wherein said middle layer is mostly silica gel.

37. (Withdrawn) The pad of claim 36, further comprising a liquid-absorbing middle layer.
38. (Withdrawn) The pad of claim 36, wherein said middle layer is wood pulp.
39. (Withdrawn) The pad of claim 36, wherein said middle layer is a super absorbent polymer.
40. (Withdrawn) The pad of claim 38, wherein said wood pulp is treated with a super absorbent polymer.
43. (Withdrawn) The pad of claim 36, wherein said middle layer is treated with baking soda.
44. (Withdrawn) The pad of claim 43, wherein said middle layer is treated with a super absorbent polymer.
46. (Withdrawn) The pad of claim 36, wherein said middle layer is treated with an anti-microbial agent.
48. (Withdrawn) The pad of claim 36, wherein said middle layer is treated with an odor-counteractive agent.
49. (Withdrawn) An anti-odor pouch comprising:
a non-woven front layer;

a non-woven back layer attached to said non-woven front layer; and
a middle layer of baking soda layered between said front and back layer.

50. (Withdrawn) The anti-odor pouch of claim 49 wherein said middle layer includes a non-woven treated with baking soda.

51. (Withdrawn) The anti-odor pouch of claim 49, wherein said pouch is used to deodorize a refrigerator.

52. (Withdrawn) The anti-odor pouch of claim 49, wherein said middle layer further comprises silica gel.

53. (Withdrawn) The anti-odor pouch of claim 52, further comprising a super absorbent polymer.

54. (Withdrawn) The anti-odor pouch of claim 52, wherein said pouch is used to deodorize and dehumidify a refrigerator.

55. (Withdrawn) A method of entrapping particles comprising:

layering a high loft non-woven top layer, having an upper end and a lower end, on top of an impervious bottom layer to create a two-layer pad;

attaching said lower end of said top layer to said bottom layer; and

placing said pad, top layer up, upon a surface where particles will fall;

wherein, when said particles fall upon said non-woven top layer said particles become trapped within a matrix of said non-woven top layer;

wherein, fine particles fall to said lower end of said top layer;

wherein, coarse particles are suspended within said matrix; and

wherein, said pad can be easily disposed of without spilling said particles.

56. (Withdrawn) The method of claim 55, wherein said pad is used to entrap litter particles.

57. (Withdrawn) The method of claim 55, wherein said pad is used to entrap carbon particles.

58. (Withdrawn) The method of claim 55, wherein said pad is used to entrap dust particles.

59. (Withdrawn) The method of claim 55, wherein said pad is used to entrap soil.

60. (Withdrawn) The method of claim 55, wherein said pad is used to entrap food particles.

61. (Withdrawn) A method of entrapping particles while absorbing liquid comprising:

layering a high loft non-woven top layer, having an upper end and a lower end, on top of

a liquid-absorbing middle layer that is layered upon an impervious bottom layer to create a three-layer pad;

attaching said lower end of said top layer to said middle layer;

attaching said middle layer to said bottom layer; and

placing said pad, top layer up, upon a surface where particles and liquid will fall;

wherein, when said particles fall upon said non-woven top layer said particles become trapped within a matrix of said non-woven top layer;

wherein, fine particles fall to said lower end of said top layer;

wherein, coarse particles are suspended within said matrix;

wherein, when liquid falls upon said non-woven top layer, said liquid passes through said top layer and is absorbed by said middle layer; and

wherein, said pad can be easily disposed of without spilling said particles and said liquid.

62. (Withdrawn) The method of claim 61 wherein said middle layer includes baking soda.

63. (Withdrawn) The method of claim 62 wherein said middle layer includes a super absorbent polymer.

64. (Withdrawn) The method of claim 61, wherein said pad is used to entrap water.

65. (Withdrawn) The method of claim 61, wherein said pad is used to entrap urine.

66. (Withdrawn) The method of claim 61, wherein said pad is used to entrap litter particles.

67. (Withdrawn) The method of claim 61, wherein said pad is used to entrap food particles.

68. (Withdrawn) The method of claim 61, wherein said pad is used to entrap soil.

69. (Withdrawn) The pad of claim 1, further comprising a means for attaching said pad to another surface.

70. The pad of claim 2 wherein said cling enhancing substance is a sticky substance.

71. (Withdrawn) A particle entrapment pad comprising:

a high loft, non absorbent nonwoven top layer treated with a cling enhancing substance to receive and trap particles, said high loft nonwoven being defined as a matrix formed of fibers or filaments randomly oriented and fused at intersecting points of said fibers or filaments and secured to an impervious bottom layer to maintain said particles within said entrapment pad,

wherein said high loft non-woven top layer receives and entraps particles and said bottom layer is impervious to said particles.

72. (Withdrawn) The pad of claim 71 wherein said top layer is treated with a dry

particulate substance selected from the group comprising: baking soda; superabsorbent polymer; antimicrobial agent; commercially available tacky material; silica; fragrance; calcium carbonate; fragrance; and odor counteractive agent.

75. (Withdrawn) A particle entrapment pad comprising:

a high loft, non-woven top layer, said high loft non-woven being defined as a matrix formed of synthetic fibers or filaments randomly oriented and fused at intersecting points of said fibers or filaments, forming an open porous structural web or matrix, capable to receive and trap particles and secured to a bottom layer to maintain said particles within said entrapment pad;

said top layer being treated with a cling enhancing substance applied or placed within the web; and

said high loft nonwoven top layer is treated with at least one additional dry, solid particulate, agent.

77. (Withdrawn) The pad of claim 75 wherein said cling enhancing substance can contact a particle, entrapping or clinging to it mechanically without forming a chemical reaction or forming chemical bonds between said particle and said cling enhancing substance.

78. (Withdrawn) The pad of Claim 75, wherein said additional dry particulate agent is selected from the group comprising: baking soda; antimicrobial agent; at least one superabsorbent polymer; fragrance; an odor counteractive agent.

82. (Withdrawn) A particle entrapment pad comprising an impervious bottom layer and a high loft non-woven top layer, wherein said high loft non-woven top layer includes a cling enhancing substance within a matrix of said non-woven that is sticky and can cling to dry particulates without entering into a chemical reaction with those particulates and is chemically inert while clinging to the particulates.

83. (Withdrawn) The pad of Claim 82, further comprising:

dry particles preloaded to said cling enhancing substance.

84. (Withdrawn) The pad of Claim 83, wherein said reactive particles are chemically reactive when solublized in a liquid.

85. (Withdrawn) The pad of Claim 83, wherein said reactive particles are selected from the group comprising: substance selected from the group comprising: baking soda; dry or powdered particulates; anti-microbial agent; superabsorbent polymer; disinfectant; silica gel; antifungal; fragrance; and odor-counteractive agent.

91. (Withdrawn) An absorbent particle entrapment pad comprising:

a high loft, non-absorbent nonwoven top layer, said high loft nonwoven being defined as

an open pore matrix or web of fibers attached to an impervious bottom layer; and

a cling enhancing substance applied to a least a portion of said fibers; and

superabsorbent polymer affixed to said cling enhancing substance;

wherein said superabsorbent polymer clinging to said fibers allow said non-absorbent

nonwoven top layer to emulate absorbency when wetted.

92. (Previously Presented) The pad of claim 2 , where the cling enhancing substance is placed or applied within the matrix and the fibers of the bonded, web, highloft matrix so that a Sticky, residue, remains. that can mechanically entrap solid particulates that come in contact with the sticky substance.

93. (Previously Presented) The Cling agent of claim 92 whereby the sticky, tacky, residue remaining on the inert fibers of the matrix mechanically adheres to entering particulates within the web to hold them and does not chemically react with these particulates such as by creating chemical bonds.

94. (Previously Presented) The cling agent of Claim 92 where the sticky, mechanical entrapment of the entering particulates holds dry particulates of Superabsorbent polymers, Baking Soda, Fragrances and odor counteractants, disinfectants., fungicides.

95. (Withdrawn) The pad of Claim 83, wherein said reactive particles are chemically reactive when exposed to a Gas such as Air.

EVIDENCE APPENDIX

1. http://www.inda.org/category/nwn_index.html This is the website of The Association of the Nonwoven Fabrics Industry and provides a term-of-art definition for 'nonwoven'
2. INDA Nonwoven Fabric sampler booklet

RELATED PROCEEDINGS APPENDING

U.S. Serial No. 11/169,738; and,

U.S. Serial No. 10/269,713.